

### **REMARKS**

Claims 1-37 were presented for examination. Of these, claims 11-16 have been withdrawn from consideration. Only claims 1-8, 17, 23, 24, 26, 27, 29-31 and 35-37 have been rejected. The remaining claims are merely "objected to." In response to the Office Action, Applicant amends claims 1, 17, 30, 35 and 37; claim 36 is cancelled; and claim 38 is added. The cancellation of claim 36 is made without prejudice or disclaimer. Reconsideration is now requested.

### **Claim objections**

The Examiner has suggested minor correction to claims 17 and 30 and Applicant has adopted the Examiner's suggestions.

### **Claim rejections - 35 USC §101**

Claims 35 and 36 have been rejected as directed to non-statutory subject matter. According to the Office Action, the claims are drawn to a computer program per se. This is an unjustified and incorrect reading of both claims. As 36 has been cancelled, the rejection of such claim is moot and will not be further discussed. With respect to claim 35, as the Office Action states, "computer programs embodied on a computer readable medium or other structure, which would permit the functionality of the program to be realized, would be directed to a product and be within a statutory category of invention." The Office Action adds a qualifier, not supported by the case law, that the computer readable medium not be disclosed "as non-statutory subject matter per se (signals or carrier waves)." As previously pointed out by Applicant, the Office Action misstates the law. Firstly, signals have been expressly recognized as statutory subject matter by the Court of Appeals for the Federal Circuit. Secondly, there is no case law stating that the computer readable medium may not be disclosed as a signal or carrier wave. The Office is trying to convince that court to change the law as to whether a signal is or is not statutory, in an appeal currently before the Federal Circuit, but until the court decides otherwise, the Office is bound to apply the law as it now stands. Thus, the rejection is without legal foundation.

In support of her rejection of claim 35 on the ground that the recited "medium" may be a (supposedly non-statutory) signal or carrier wave, the Examiner has referred to the specification on pages 5 and 16 wherein it is indicated that the "medium" may "embody or include a ... carrier signal" and "The carrier may be an electrical or optical signal which may be transmitted via an electronic or an optical cable or by radio or other means." The Examiner apparently is taking the position that, in her view, claim 35 encompasses both statutory and non-statutory subject matter and that because it covers the possibility of non-statutory embodiments (under her interpretation of statutory subject matter), the claim is not confined to subject matter falling within §101. Without conceding the legal analysis, with which Applicant most certainly does not agree, claim 35 has been amended to be limited to a "tangible" medium, thus excluding the intangible and leaving for the court to decide whether a carrier signal is a tangible medium. Claim 35 therefore, even under the Examiner's interpretation of the law, is now directed to statutory subject matter only. Accordingly, the rejection should be withdrawn.

Applicant reserves the right to pursue claims of the original scope of claims 35 and 36, should it desire to do so.

Claim 36, though cancelled, has been replaced by a method claim, claim 38. While claim 38 does refer to a "signal," it does so in the context of "transmitting" that signal. The *transmission* of a signal clearly is an act within the realm of statutory subject matter.

### **Rejections Under 35 U.S.C. §102**

Claims 1-8, 17, 23, 24, 26, 27, 29-31 and 35-37 have been rejected under 35 USC §102(e) as purportedly being anticipated by Marınca '847. Reconsideration is requested in light of the amendment of claim 1 and the remarks which follow.

Contrary to the Office Action, claim 1, even prior to the above amendment, clearly distinguished over Marınca. Further distinction is provided in amended claim 1. While the technique of Marınca '847 may *result* in correcting for temperature effects over a relatively wide temperature range, it is abundantly clear that Marınca '847 does not *perform an adjustment at two temperatures* to provide for the compensation of temperature effects over a temperature range, as required by claim 1. Amended claim 1 clarifies that the claimed method uses a two-

temperature technique (scaling at a first temperature, altering from the first to a second temperature, and correcting the output value at the second temperature). Marınca '847 does not disclose such operation. Consequently, it does not anticipate claim 1.

Relative to claim 17, with the above amendment thereto, substantially the same arguments apply as with respect to claim 1. Thus, it should be clear that Marınca '847 does not anticipate claim 17.

Claim 31, also rejected over the same reference, has not been amended, but nonetheless distinguishes over Marınca '847. The Examiner has misread the reference. There is no disclosure of digitally matching the output value, at a second temperature, to the desired output value while not changing the desired output voltage value at the first temperature. Manifestly, there is also no disclosure of any way to establish such a second temperature. While claims 1 and 17 have been amended to expressly refer to establishing the second temperature, it is unnecessary to include such a limitation in order to distinguish over Marınca '847 because that reference never establishes the intentional use of a second temperature for calibration. The clear implication of the '847 disclosure is that the calibration operation described by the Examiner would, in fact, be carried out at a single temperature.

For the foregoing reasons, the rejection under §102(e) should be withdrawn as to all claims.

#### Allowable Subject Matter

Applicant again notes with appreciation the indication of allowable subject matter in claims 18-22, 25, 28 and 32-34. However, in light of the above amendment and arguments, it is believed unnecessary to rewrite any of those claims in independent form.

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### CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,



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